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UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF ALASKA

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JOHNNY LEE NAPIER,

Defendant.

Case No. 4:04-cr-0033-JWS

MOTION FOR CLARIFICATION
Filed on Shortened Time

Defendant, JOHNNY LEE NAPIER, by and through counsel,¹ Mary C. Geddes and M. J. Haden, Assistant Federal Defenders, respectfully seeks clarification of this court's order of October 24, 2006, in light of the Ninth Circuit's opinion in his case, 463 F.3d 1040 (9th Cir. 2006). In seeking clarification now, Mr. Napier hopes to avoid any future confusion concerning the specific subject matter for resentencing.

¹ MJ Haden, trial court counsel, and Mary C. Geddes, appellate counsel, will jointly represent Mr. Napier during this remand.

Mr. Napier's appeal had objected to two non-standard conditions of supervised release. The court of appeals ruled on one of the objections and remanded on the other.

In this court's order of October 24, 2006, the court directed the PSR writer to investigate facts justifying the "non-standard conditions" (sic) previously imposed by Judge Fitzgerald. The language of this order, no doubt inadvertently, suggests that the "conditions" (plural) were the subject of the remand, and that both will be reconsidered on remand.

As this court is aware, the circuit court of appeals' remand concerns only one of the two nonstandard conditions, i.e., the mental health condition. With respect to the other condition, mandating drug treatment, the circuit court found that the district court had abused its discretion by imposing it, and specifically ordered that, on remand, the district court may not reimpose this condition.

Therefore, an order clarifying its earlier direction to the PSR writer is requested. A proposed order is attached.

DATED this 30th day of October, 2006.

Respectfully submitted,

FEDERAL PUBLIC DEFENDER
FOR THE DISTRICT OF ALASKA

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Certification:

I certify that on October 30, 2006, a copy of the foregoing document, with attachments, was served electronically on:

Stephen Cooper, Esq.

/s/ M. J. Haden